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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,457	09/25/2003	Barry E. Gilman	GIL001-101	4612
7590 08/24/2005 DIEDERIKS & WHITELAW, PLC 12471 Dillingham Square, #301 Woodbridge, VA 22192			EXAMINER NELSON, JAMES T	
			ART UNIT 3637	PAPER NUMBER

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,457

Applicant(s)

GILMAN, BARRY E.

Examiner

James T. Nelson

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 09/25/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- LM
2. Claims ~~10~~^{through 18 are} is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. It is unclear whether the applicant is claiming a retainer assembly or a retainer assembly in combination with a cabinet shell defining a food compartment and at least one shelving unit for supporting food items within a refrigerator. If the applicant intends to claim only the retainer assembly, all recitation of the combination must be removed. If the applicant intends to claim the combination, the claim must be amended to include the details described in the preamble.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10, 11, 12, and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Field (U.S. Patent 4,588,093).

Regarding claim 10: In Fig. 1 and 2, Field shows a retainer assembly (10) comprising: a divider element (20) mounted for movement along a defined axis relative to the at least one shelving unit (12), a biasing member (30) urging the divider element in a

predetermined direction relative to the at least one shelving unit (12), wherein items (14) positioned on the at least one shelving unit (12) are automatically engaged by the divider element (20) in order to be maintained in a snug configuration.

Regarding claim 11: In Fig. 1 and 2, Field shows a support arm (26) extending from the divider element (20), said support arm (26) mounting the divider element (20) for sliding movement relative to the at least one shelving unit (12).

Regarding claim 12: In Fig. 1 and 2, Field shows at least one shelving unit (12) defined by a door pick-off bucket (12) including at least one upstanding wall (31), said support arm (26) being directly, slidably supported by at least one upstanding wall (31).

Regarding claim 13: In Fig. 1 and 2, Field shows at least one upstanding wall (31) constituting a front wall (31) of the door pick-off bucket (12).

In claim 10, the phrase “for a refrigerator including a cabinet shell defining a food compartment and at least one shelving unit for supporting food items within the refrigerator” constitutes intended use and is given no patentable weight.

5. Claims 10, 14, 15, 16, 17, 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rankin (U.S. Patent 6,464,089).

Regarding claim 10: In Fig. 1, Rankin shows a retainer assembly (10) comprising a divider element (34) mounted for movement along a defined axis (4) relative to the at least one shelving unit (14), and a biasing member (20) urging the divider element (34) in a predetermined direction (4) relative to the at least one shelving unit (14), wherein items positioned on the at least one shelving unit (14) are automatically engaged by the divider element (34) in order to be maintained in a snug configuration.

Regarding claims 14 and 15: In Fig. 1 and 3, Rankin shows a biasing member constituting a spiral spring (20), including a first end portion (60) and a second end portion (50), with the first end portion (60) attached to the divider element (34) and the second end portion attached to the at least one shelving unit (14).

Regarding claim 16: In Fig. 1 and 3, Rankin shows a pair of plates (46) which are spaced so as to define a cavity, said biasing member (20) including a first end portion (60) which extends into the cavity.

Regarding claim 17: In Fig. 1, Rankin shows at least one opening on the end of the shelf (16), a biasing member (20) including a second end portion (50) directly attached to the at least one shelving unit (14) through the opening.

Regarding claim 18: In Fig. 1, Rankin shows a retainer assembly (10) wherein the biasing member constitutes a tension spring (20).

In claim 10, the phrase “for a refrigerator including a cabinet shell defining a food compartment and at least one shelving unit for supporting food items within the refrigerator” constitutes intended use and is given no patentable weight.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- a. A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 3, 4, 19, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeziorowski (U.S. Patent 4,859,010), in view of Field (U.S. Patent 4,588,093).

Regarding claim 1: In Fig. 1, enclosed on page 8, Jeziorowski shows a refrigerator (10) comprising: a cabinet shell (A), a liner (B) arranged in the cabinet shell (A) and defining a compartment (14), a door (12) attached to and movable relative to the cabinet shell (A) in order to selectively access the compartment (14), and at least one shelving unit (32) provided in the compartment (14), said at least one shelving unit (32) being adapted to support items thereon. Jeziorowski lacks a retainer assembly for securing items on the at least one shelving unit, said retainer assembly including a divider element mounted for movement along a defined axis relative to the at least one shelving unit, and a biasing member urging the divider element in a predetermined direction, wherein items positioned on the at least one shelving unit are automatically engaged by the divider element in order to be maintained in a snug configuration. In Fig. 1 and 2, Field teaches a retainer assembly (10) for securing items (14) on at least one shelving unit (12), including a divider element (20) mounted for movement along a defined axis relative to the at least one shelving unit (12), and a biasing member (30) urging the divider element in a predetermined direction relative to the at least one shelving unit (12), wherein items (14) positioned on the at least one shelving unit (12) are automatically engaged by the divider element (20) in order to be maintained in a snug configuration.

Regarding claim 2: In Fig. 1 and 2, Field teaches a support arm (26) extending from the divider element, said support arm (26) mounting the divider element (20) for sliding movement relative to the at least one shelving unit (12).

Regarding claims 3 and 4: In Fig. 1, Jeziorowski shows at least one shelving unit defined by a door pick-off bucket (12) including an upstanding wall (31) constituting the

front wall (31) of the door pick-off bucket (12), but lacks a support arm being directly, slidably supported by at least one upstanding wall. In Fig. 1 and 2, Field teaches a support arm (26) extending from the divider element, said support arm (26) mounting the divider element (20) for sliding movement relative to the at least one shelving unit (12).

It would have been obvious to one skilled in the art at the time of invention to combine the retainer assembly of Field with the refrigerator of Jeziorowski in order to secure items placed on the shelving units.

Regarding claims 19, 20, and 21: The claimed method of using the shelf retainer to secure items on a shelving unit of a refrigerator would have been an obvious method of using the retainer device of Field on the shelving unit of Jeziorowski.

8. Claims 1, 5, 6, 7, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeziorowski (U.S. Patent 4,859,010) in view of Rankin (U.S. Patent 6,464,089).

Regarding claim 1: In Fig. 1, enclosed on page 8, Jeziorowski shows a refrigerator (10) comprising: a cabinet shell (A), a liner (B) arranged in the cabinet shell (A) and defining a compartment (14), a door (12) attached to and movable relative to the cabinet shell (A) in order to selectively access the compartment (14), and at least one shelving unit (32) provided in the compartment (14), said at least one shelving unit (32) being adapted to support items thereon. Jeziorowski lacks a retainer assembly for securing items on the at least one shelving unit, said retainer assembly including a divider element mounted for movement along a defined axis relative to the at least one shelving unit, and a biasing member urging the divider element in a predetermined direction, wherein items positioned on the at least one shelving unit are automatically engaged by the divider

element in order to be maintained in a snug configuration. In Fig. 1, Rankin teaches a retainer assembly (10) for securing items on at least one shelving unit, said retainer assembly (10) including a divider element (34) mounted for movement along a defined axis relative to the at least one shelving unit (14), and a biasing member (20) urging the divider element (34) in a predetermined direction, wherein items positioned on the at least one shelving unit (14) are automatically engaged by the divider element (34) in order to be maintained in a snug configuration.

Regarding claim 5: In Fig. 1, Rankin teaches a biasing member constituting a spiral spring (20).

Regarding claim 6: In Fig. 3, Rankin teaches a spiral spring (20) including a first end portion (60), and a second end portion (50), with the first end portion (60) being attached to the divider element (34) and the second end portion (50) being attached to the at least one shelving unit (14).

Regarding claim 7: In Fig. 1, Rankin teaches a retainer assembly (34) further including a pair of plates (46) which are spaced so as to define a cavity between them. In Fig. 3, Rankin shows said biasing member (20), including a first end portion (60), extending into the defined cavity.

Regarding claim 8: In Fig. 1, Rankin teaches at least one shelving unit (14) formed with at least one opening on the end (16), said biasing member (20) including a second end portion (50) directly attached to the at least one shelving unit (14) through the opening on the end (16).

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. Ahmed, Bent, Leimkuhler, and Whitaker show refrigerators. Stone, Stuart, Valiulis '306, and Valiulis '704 show shelf dividers. Allen, Bock, Hambly, Moffitt, and Thomson show tension springs. Hunter, Poskin, and Skelton show torsion springs. Crum, Johnson, Polvere, Robertson, Skalski, Smith, Walsh, and EP 0337340 A2 show spiral springs.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James T. Nelson whose telephone number is (571) 272-1491. The examiner can normally be reached on M-F 9:00am - 5:30pm.
11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTN

08/15/2005

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